

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EXIDE TECHNOLOGIES,

Plaintiff,

CIVIL ACTION NO. 07-CV-11269-DT

VS.

DISTRICT JUDGE GEORGE CARAM STEEH

KMART CORPORATION,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION TO COMPEL**

This matter comes before the Court on Defendant's Motion to Compel Discovery from Plaintiff and to Extend Dates filed on May 23, 2008. (Docket no. 30). The response of Plaintiff was due on June 9, 2008. (Docket no. 34). Plaintiff has not responded, and the time for responding has now expired. Defendant has filed a Reply brief. (Docket no. 35). This motion has been referred to the undersigned for decision. (Docket no. 32). This Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). This motion is now ready for ruling.¹

Defendant served its First Set of Interrogatories and Requests for Production of Documents to Plaintiff on August 16, 2007. (Docket no. 30 ex. M). Plaintiff responded with answers and documents. However, on May 21, 2008 Defendant's counsel sent a letter to Plaintiff's counsel setting out in 18 paragraphs the alleged deficiencies in Plaintiff's production of responsive

¹ Pursuant to the Court's scheduling order for the briefing on this motion the parties are to file a Joint Statement of Resolved/Unresolved Issues on June 20, 2008. (Docket no. 34). However, the Court determines that there is no need to delay the consideration of this unopposed motion until after that statement of issues is filed.

documents and answers to interrogatories.² (*Id.* ex. I). Defendant seeks to compel Plaintiff to produce the documents and information requested in that May 21, 2008 correspondence pursuant to Fed. R. Civ. P. 37(a)(3). The discovery period in this action ended on May 28, 2008. (Docket no. 29). Because Defendant's request is not opposed by Plaintiff and is otherwise supported by the record, it will be granted.

Defendant also seeks leave to continue its Fed. R. Civ. P. 30(b)(6) deposition of Plaintiff. Defendant served proper notice of such a deposition on April 15, 2008 for Plaintiff's representative, Brad Wheelus. (Docket no. 30, ex. K-1). Defendant contends that Mr. Wheelus was not prepared to answer questions on the topics listed in this notice. Also, Defendant seeks to continue its deposition of Glenda Elder, an employee of Plaintiff. Defendant served notice of her deposition under Rule 30 on April 7, 2008. Defendant states that Plaintiff's counsel suggested the continuation of Elder's deposition so that Defendant may obtain line item detail on the reasons Plaintiff claims the deductions taken by Defendant are improper. (Docket no. 35 at 3). Because these contentions and assertions by Defendant are not disputed by Plaintiff, the Court will grant the relief requested.

The Court will not grant at this time the remaining relief requested by Defendant. If Plaintiff fails to comply with this Order such relief, such as barring Plaintiff from making certain claims or awarding costs, fees, and expenses, might be appropriate. The district judge entered a stipulated order which extends the dispositive motion cut-off date until August 1, 2008. (Docket no. 33).

IT IS THEREFORE ORDERED that Defendant's Motion to Compel (docket no. 30) is **GRANTED IN PART AND DENIED IN PART.**

² Defendant served a second set of discovery requests on April 14, 2008. (Docket no. 31).

IT IS FURTHER ORDERED that on or before July 3, 2008 Plaintiff produce full and complete discovery responses to the discovery requests set forth in the May 21, 2008 correspondence from Defendant's counsel to Plaintiff's counsel (docket no. 30 ex. I).

IT IS FURTHER ORDERED that on or before June 24, 2008 Plaintiff's counsel advise Defendant's counsel of available deposition dates for one or more Rule 30(b)(6) deponents knowledgeable about all topics listed in the April 15, 2008 Notice of Deposition of Brad Wheelus (docket no. 30 ex. K-1) and of available deposition dates for Glenda Elder. These depositions must be concluded on or before July 18, 2008.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: June 19, 2008

s/Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this document was served upon Counsel of Record on this date.

Dated: June 19, 2008

s/ D. Opalewski for Lisa Bartlett
Courtroom Deputy